Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Improving Competitive Broadband Access to Multiple Tenant Environments	)	GN Docket No. 17-142
	)	

REPLY COMMENTS OF REALTYCOM PARTNERS

August 22, 2017

INTRODUCTION.

RealtyCom Partners ("RealtyCom") is a telecommunications management consulting firm serving multifamily owners, developers, and property managers who collectively own or manage approximately 420,000 apartment homes, located in 43 states, consisting of a mix of affordable, senior, market rate, and luxury apartment homes. RealtyCom submits these reply comments to the Federal Communications Commission ("FCC" or "Commission") in response to the Commission's Notice of Inquiry ("NOI") adopted June 22, 2017, in the matter of Improving Competitive Broadband Access to Multiple Tenant Environments ("MTEs").

RealtyCom will limit its reply comments to two of the erroneous claims advanced by INCOMPAS in its comments: (1) that revenue sharing arrangements are an improper and anticompetitive "kickback"; and (2) that exclusive use of designated wiring has no impact on a provider's willingness to install, maintain, or upgrade such wiring.[1]

I. Revenue Sharing Arrangements.

INCOMPAS alleges that "revenue sharing is a kickback from the provider to the landlord" and that "the effect of revenue sharing—if not the outright purpose—is to stifle competition."[2] INCOMPAS insists that "revenue sharing…has essentially no potential to reduce

[1] Comments of INCOMPAS, GN Docket No. 17-142 (filed July 24, 2017) ("INCOMPAS Comments").

[2] INCOMPAS Comments, p. 10.

costs or increase choice."[3]

As RealtyCom showed in its prior comments, INCOMPAS grossly mischaracterizes the function of monetary consideration in service contracts between providers and MTE owners. Rather than being some form of anticompetitive mechanism, "such contractual consideration flows directly from: (a) significant capital costs MTE owners bear in providing facilities for Carrier use; (b) ongoing operational costs to MTE owners in performing their obligations under the agreements; and (c) MTE owners' reluctance to have to distribute such costs to residents in the form of higher rents."[4]

We will elaborate on this point with two specific examples.

(1) Denver Project. A major MTE owner who subsequently became a RealtyCom client recently completed a major transit-oriented development in Denver, Colorado, the residential portion of which included more than 500 units. In order to offer residents a choice of cutting-edge telecommunications services, the developer entered into agreements with two major service providers, each with a fiber-to-the-unit (FTTU) system.[5] In addition, the developer entered into an agreement with a private cable operator to offer DirecTV programming to residents. To maintain future flexibility to bring in another service provider, the developer elected to install an extra home run microduct to each unit. Here is a partial accounting[6] of the

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[3] INCOMPAS Comments, p. 11.

[4] Comments of RealtyCom Partners, GN Docket No. 17-142 (filed July 24, 2017) ("RealtyCom Comments"), pp. 4 - 5.

[5] In RealtyCom's experience, it is not unusual for new construction multifamily projects in major markets to have two FTTU providers serving the property, each with a triple play of services, including a broadband Internet access service tier with symmetrical bandwidth of one gigabit per second.

[6] This does not include a number of other material and labor costs borne by the developer, including exterior conduit, electrical service to (and multipoint grounds) at each main distribution frame and intermediate distribution frame, and electrical service to each unit distribution panel. Nor does it include the costs of providing space and climate control for dedicated equipment rooms.

work performed and costs borne by the developer in connection with deploying two FTTU systems, along with the additional future-proofing infrastructure:

Materials and Labor Costs	Cost per Unit
Labor costs for installation of 12.7 mm microduct (with material provided by Provider A)	$155.00
Labor costs for ruggedized fiber (with material provided by Provider B)	$113.00
Materials and labor for 12.7 mm microduct (installed by developer for future use)	$144.00
Materials and labor for home run RG6 coaxial cable (provided and installed by developer for use by Provider C)	$112.00
Labor costs for installation of unit distribution panels (with panels provided by Provider A)	$50.00
Materials and labor for in-unit wiring of RG6 and Cat 6 from the distribution panels to each outlet	$500.00
TOTAL :	$1,074.00

Under its agreements with the two FTTU service providers and private cable operator, the developer received initial one-time payments (i.e., "door fees") and recurring payments as a percentage of the providers' revenues (i.e., "revenue share"). Combined door fees were $75 per unit. Projected revenue share payments at stabilization (i.e., when the property is fully leased up, typically within twelve to eighteen months after opening) are $23 per unit per year.

The developer's partial costs for the two FTTU systems and additional facilities for future use were $1,074 per unit. With door fees and projected revenue share payments, it will take over *forty-three years*, after stabilization, for the developer to break even on its portion of the work.

(2) San Francisco Bay Area Project. Another RealtyCom client recently completed development of a multifamily community in the South Bay area, consisting of just under 300 living units. The developer entered into agreements with two major service providers, one with a fiber-to-the-unit (FTTU) system and one with a hybrid fiber-coax system utilizing DOCSIS 3.1 (allowing for gigabit speeds). The developer elected to install extra home runs of RG6 and Cat 5e cabling to each unit for future use. Here is a partial accounting[7] of the work performed and

[7] As with the prior example, this does not include a number of other material and labor costs borne by the developer, including exterior conduit and electrical service to (and multipoint

costs borne by the developer in connection with deploying the FTTU and hybrid fiber-coax systems, with some additional future-proofing infrastructure:

Materials and Labor Costs	Cost per Unit
Labor costs for installation of 8.5 mm microduct (with material provided by Provider A)	$80.00
Materials and labor for home run Cat 5e cable (provided and installed by developer for future use)	$75.00
Materials and labor for home run RG6 coaxial cable (provided and installed by developer for future use)	$75.00
Materials and labor for installation of unit distribution panels	$285.00
Materials and labor for in-unit wiring of RG6 and Cat 5e from the distribution panels to each outlet	$315.00
TOTAL :	$830.00

Under its agreements with the two competitive service providers, the developer received door fees and recurring revenue share payments. Combined door fees were $250 per unit. Projected revenue share payments at stabilization are $56 per unit per year.

The developer's partial costs for the two systems and additional facilities for future use were $830 per unit. With door fees and projected revenue share payments, it will take over ten years, after stabilization, for the developer to break even on its portion of the work.[8]

In our experience, the economics of these projects are not unique. Installing communications infrastructure in multifamily properties is a costly endeavor. Door fees and revenue share payments by providers are useful in offsetting some—but far short of *all*—of those costs. In the absence of such investment recovery payments, all costs would be borne by

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grounds) at each main distribution frame and intermediate distribution frame. Nor does it include the costs of providing space and climate control for dedicated equipment rooms.

[8] Because the service agreements have ten-year terms, commencing with the first certificate of occupancy (i.e., well before stabilization), there is almost no chance that door fees and revenue share payments will ever put the developer in the black as to low-voltage infrastructure costs during the term of each provider's agreement.

developers and, through higher rents, their residents.[9] This would operate as a disincentive for developers to invest in such infrastructure.[10]

INCOMPAS goes even farther, opining that "landlords' incentives can be flipped where they become beholden to alternative revenue sources under certain kinds of commercial arrangements with communications providers, such as revenue sharing agreements."[11] To aid in assessing the plausibility of that claim, we will add some additional numbers to the mix. Monthly rents at the Denver project described above range from $1,600 (for a studio apartment) to $5,400 (for a two bed, two bath, on an upper floor). Monthly rents at the South Bay project described above range from $2,800 (for a one bed, one bath) to $6,000 (for a two bed, two bath). INCOMPAS would have the Commission believe that the owner of the Denver community would jeopardize the satisfaction of a resident who is paying between $19,000 and $64,800 a year in rent in order to rake in *twenty-three dollars*. The owner of the South Bay community would be risking loss of a resident paying between $33,600 and $72,000 a year in rent in order to make *fifty-six dollars*. INCOMPAS's "flipped incentives" conjecture does not stand up to scrutiny.

In its reply comments filed earlier today, INCOMPAS struggles to salvage its flimsy argument by attacking the analysis provided in the RealtyCom Comments.[12] To bring the math more in line with its policy preferences, INCOMPAS assumes that a property has one provider, rather than two.[13] INCOMPAS does this despite the fact that the data—not anecdotes—in this

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[9] By opposing customary mechanisms for having service providers contribute to the capital costs of system components installed for their use, INCOMPAS seeks resident *subsidies* for its members. While some INCOMPAS members may be unwilling or unable to bear all of the costs of installing their own systems, that does not justify scapegoating MDU owners or instituting policy changes that would shift those costs indiscriminately to residents.

[10] Making cabling a non-excludable good by regulatory fiat, as INCOMPAS requests, would give rise to a classic economic free rider problem.

[11] INCOMPAS Comments, p. 7.

[12] Reply Comments of INCOMPAS, GN Docket No. 17-142 (filed August 22, 2017) ("INCOMPAS Reply Comments"), pp. 10 - 13. Citing RealtyCom Comments, pp. 6 - 7.

[13] INCOMPAS Reply Comments, p. 10.

docket show that most MDUs have at least *two* providers of video and broadband Internet services.[14] INCOMPAS self-servingly assumes "a more realistic 90 percent take rate for both broadband and video service," without stating any basis for that assumption.[15] As to whether the assumption is "more realistic," RealtyCom can say that—of its clients' 619 properties, totaling 140,157 units, that receive revenue share payments based on penetration levels—*not a single one* has a provider with a take rate over 90% for both video and Internet service.[16] However, even if we allow INCOMPAS to deal from the deck it stacked, its math shows that the property would receive revenue share payments of $2,520 per month, or $151.20 per unit per year. On *that* basis, INCOMPAS proclaims that "it is easy to see how such revenue share arrangements operate as a wide-ranging deterrent for competitive services."[17] Again, INCOMPAS demonstrates a complete lack of understanding of basic economics of the multifamily housing industry. Of the variety of ancillary revenue sources in multifamily properties, telecom does not even break into the top ten.[18] Let us visualize how that $151.20 per unit per year stacks up against the median

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[14] The fact that *any* MDU would have more than one provider is, of course, irreconcilable with INCOMPAS's fanciful theory of owners' fixation on revenue share. See RealtyCom Comments, p. 3 (i.e., "of the 1,800 apartment communities owned and managed by RealtyCom clients, 94% of these apartment communities have two or more Carriers providing service"). See the comments of over thirty MDU owners and managers, "RE: GN Docket No. 17-142 - In the Matter of Improving Competitive Broadband Access to Multiple Tenant Environments," filed on July 24, 2017 (p. 1). See Comments of the National Multifamily Housing Council, GN Docket No. 17-142, filed July 24, 2017, pp. 2 - 3, citing a 2017 NMHC survey of MDU owners showing "most apartment building residents have access to *two or more BIAS providers*."

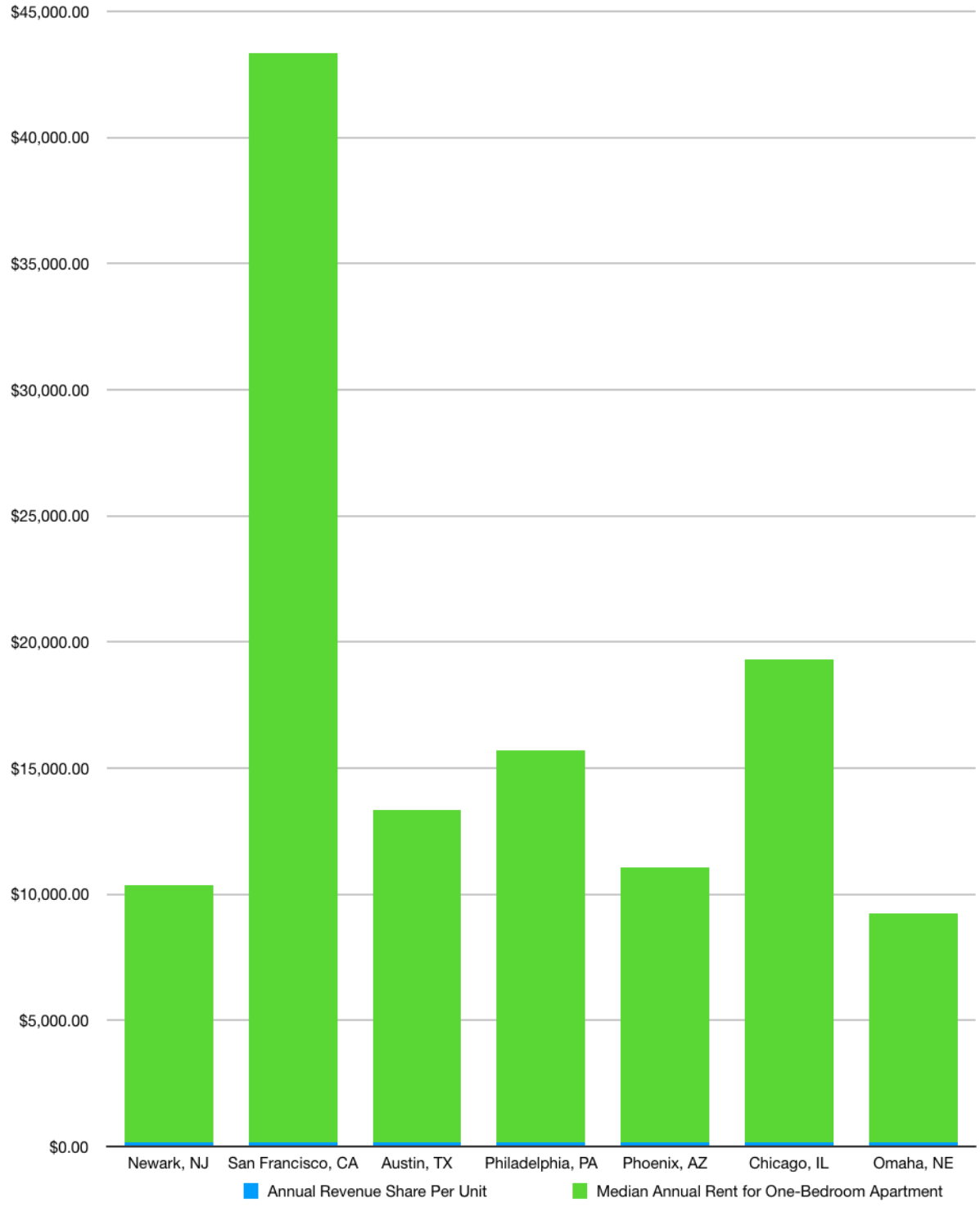
[15] INCOMPAS Reply Comments, p. 11. INCOMPAS also juices the revenues on which revenue share are payable to $140 per month, without explanation.

[16] For providers paying a percentage of revenues at those properties, the average take rate for video service is 36% and for Internet service is 54%.

[17] INCOMPAS Reply Comments, p. 11.

[18] Ancillary revenue from all sources *combined* only accounts for 4.4% of monthly revenues to properties. "What are the Top Sources of Ancillary Income?" Brent Williams' Apartment Blog, July 25, 2017. Available as of August 22, 2017, at: https://www.multifamilyinsiders.com/multifamily-blogs/what-are-the-top-sources-of-ancillary-income

annual rent for a *one-bedroom* apartment in a range of cities across the United States:[19]



[19] "Here's What an Average One-Bedroom Apartment Costs in 50 U.S. Cities," Andrew DePietro, *Time*, June 7, 2016. Available as of August 22, 2017, at: http://time.com/money/4359971/average-apartment-cost-us-cities/ .

INCOMPAS asks this Commission to believe that the little blue slice on that chart is so important to MDU owners that they will chase it to the exclusion of all other considerations, including giving residents competitive telecom amenities so they don't pack up and move across the street. That is beyond the tail wagging the dog—it's the footfall of a *flea* on the tail of the dog. INCOMPAS's claim that MDU owners think or behave this way is absurd.

INCOMPAS states that, due to revenue sharing arrangements, "Landlords have no incentive to grant access to competitive providers when any subscriber gained by that provider means reduced income to the landlord."[20] Yet INCOMPAS remains silent about the experience of the most prominent of its few members who actually serve multifamily properties: Google Fiber. Google Fiber does not pay door fees. Google Fiber does not enter into revenue sharing arrangements with property owners. Nonetheless, Google Fiber has already signed agreements with over 4,200 residential MTEs in the eight markets it has entered.[21] The widespread embrace of Google Fiber among multifamily owners stands as another visible, measurable rebuttal to INCOMPAS's innuendo about landlord motives.

II. Exclusive Use of Designated Wiring.

INCOMPAS states, "Various forms of exclusivity agreements in MDUs are used by communications providers, but the one that represents the most harm to competition is wiring exclusivity agreements. Under such agreements, communications providers enter into agreements under which they obtain exclusive right to access and use wiring in a building."[22] INCOMPAS goes on to claim that "[t]here is simply no evidence that exclusive rights—…to the

[20] INCOMPAS Comments, p. 10.

[21] This is based on data from Google Fiber's website (https://fiber.google.com/about/). The fact that Google Fiber has only provided service to about 40% of those properties suggests that the bottleneck in its competitive deployment lies elsewhere—not with MTE owners requesting financial consideration to offset their substantial costs in providing facilities for Google Fiber's use.

[22] INCOMPAS Comments, p. 14.

wiring in a building—have any relationship to a provider's willingness to install, upgrade, or maintain facilities."[23]

In fact, the present record—and that developed in response to the Petition of the Multifamily Broadband Council Seeking Preemption of Article 52 of the San Francisco Police Code ("MBC Petition")[24]—is replete with evidence of that relationship. NCTA described how "exclusive wiring arrangements promote deployment and availability of broadband service in MTEs."[25] The National Multifamily Housing Council observed that exclusive wiring arrangements often relieve property owners of "the significant maintenance responsibilities that come with communications facilities, including diagnosing and fixing wiring problems" and help avoid a tragedy of the commons with respect to building infrastructure.[26] The Multifamily Broadband Council, on behalf of its membership of small, independent service providers, showed that securing financing for construction of broadband infrastructure requires that the provider "submit indicators of likely success, such as an agreement granting the provider undisturbed use of inside wiring owned by the property owners."[27] Mill Creek Residential Trust described how San Francisco's evisceration of exclusive wiring arrangements has had a chilling effect on broadband investment, with providers reluctant to install inside wiring, refusing to maintain and upgrade home run wiring, refusing to deploy unless the owner bears the entire expense for their system, and, in one case, stating that it can no longer justify doing business in San Francisco under Article 52.[28]

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[23] INCOMPAS Comments, p. 16.

[24] Petition of the Multifamily Broadband Council Seeking Preemption of Article 52 of the San Francisco Police Code, MB Docket No. 17-91 ("MBC Petition").

[25] Comments of NCTA - The Internet and Television Association, GN Docket No. 17-142, pp. 3 - 5.

[26] Comments of The National Multifamily Housing Council, GN Docket No. 17-142, p. 4.

[27] MBC Petition, p. 7.

[28] Reply Comments of Mill Creek Residential Trust to MBC Petition, pp. 3 - 5.

In its most surprising argument, INCOMPAS avers, "There is no legitimate reason why good service presupposes exclusive wiring—for instance, one of our members, Google Fiber, has the highest consumer satisfaction in the market."[29] Also, "In fact, to our knowledge, INCOMPAS members do not engage in these exclusive wiring arrangements."[30] INCOMPAS's knowledge of its members' business practices is faulty, at best. Some notable examples:

Google Fiber. Contrary to INCOMPAS's statement, during a recent panel discussion of San Francisco's Article 52 at the Broadband Communities Summit in Dallas, Texas, Michael Purdy, Senior Counsel, Corporate and Policy, for Google Access (i.e., the division that includes Google Fiber), publicly acknowledged that Google Fiber requires exclusive use of its home run wiring.[31] The standard contract form that Google Fiber presents to multifamily owners provides for Google Fiber's sole ownership and control of its home run cabling after installation, stating, for example, that its facilities "will not be deemed fixtures" and that "Owner will not move, disturb, alter or change the Facilities except with Google Fiber's written consent".[32]

Rocket Fiber. In its standard access agreement form for MTE owners, Rocket Fiber provides that, "Owner acknowledges that Facilities[33] installed in the Building shall at all times

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[29] INCOMPAS Comments, p. 15.

[30] INCOMPAS Comments, p. 15, fn. 42.

[31] "Heads Up! New Legal Twist in MDU Open Access for Providers," Broadband Communities Summit, Dallas, Texas, May 3, 2017.

[32] See, for example, the Right of Entry and Installation Agreement, dated October 29, 2015, between Google Fiber and Lakewood Bay Home Owners Association, available online as of August 18, 2017 at: https://lakewoodbay.hoa-express.com/documents/AwF2ssHI6XJHfSx3r3BymL22P2sa6Gv4OsgUQcZMY9UMwIIvbA156v7HkcgOpleLZADpZoqqEwnYgjo2ssLAr1s8UXLCIF7s55W8Q7VMBYkbidCrczeq4HmdgkrxdPSR4sz8IdMrbW5icXV8K9eTtqQKZM9wwNAhpMjTW49H6f2ugMwaxH6v3YaBLaa+9LVEULc9dVHU3ErfImrWt8k5MjyXJrGTmGdIn447+t/Ybtw9gEsP4qHlTV0hmTZDXs3NiV/zXbey73pAKq/wGJW3Sl8jq9A2afzDF4SuuAxMCgVMcCdoOhFLuMNk7mqx4C/HYJfiMGDyvsmifPN17EmyCrdtNeXhRCSK9Mqxx5mDIlqPnialzICi2H+M6XrLeJFoFSMiH7hLk51L5DmtQuj9Ojk8PoYN9w4iIzPKgbfdTbBIC6+J+KYz2BOnSKHNaR+5WiOum9UALxD+VyV30fMThJ+x

[33] Rocket Fiber defines "Facilities" broadly, to include all wiring, cabling, conduit, and molding that it installs.

belong to Rocket Fiber and shall be considered Rocket Fiber's personal property." Further, "Owner shall not…alter, move, attempt to repair, tamper with or remove any of the Facilities or knowingly permit others to do so."

WideOpenWest (WOW). RealtyCom has never seen WOW offer to install home run wiring without securing the exclusive right to use that wiring for a defined period of time. Language from a current WOW agreement states, "Per the terms of this Agreement and subject to all applicable law, the Operator has the exclusive right to use the Cable Home Run Wiring and the non-exclusive right to use the Cable Home Wiring during the Term hereof."

Verizon. Verizon also consistently refuses to share home run cabling that it has installed. In a typical license agreement for entry to an MTE, Verizon states that "[t]he fiber optic, copper and coaxial cables and lines and any flexible microducts ('Cabling Equipment') installed by Verizon within such Pathways will not be Building fixtures and will continue to be owned by Verizon. Licensor shall not move, disturb, alter or change the Cabling Equipment or connect, directly or indirectly, any telephones, computers, televisions or other devices to the Cabling Equipment."[34]

The actions of INCOMPAS's members speak louder than the organization's words. When Google Fiber, Rocket Fiber, WOW, and Verizon install home run wiring, they *do not* immediately give it up for common use by their competitors. In that, they behave consistently with the many providers—large and small—who have spoken out against the wire-sharing mandate of Article 52 and consideration of eliminating exclusive wiring arrangements in the present Notice of Inquiry. Their actions are consistent with the observations and experiences recounted by so many MDU owners, managers, and developers in these proceedings. The business practices of INCOMPAS's members do not support, but rather *refute*, the spurious claim that there is no relationship between a provider's exclusive right to *use* wiring and its willingness to bear the cost of *installing* that same wiring.

CONCLUSION.

[34] See, for example, the sample Premise Access License provided by Verizon to condominium associations in California, prior to its transfer to Frontier, available online as of August 18, 2017, at: http://www.thevillagecondos.com/Projects/VerizonFIOS/MDUPortfolio.pdf.

For the reasons discussed above, the Commission should not entertain further rulemaking regarding exclusive marketing, exclusive use of wire, revenue sharing agreements, or bulk billing agreements, as the market is functioning well, with no adverse impact to the availability of broadband services to MTE tenants. Indeed, MTE residents have more and better service options available to them today than they ever have before.

Respectfully submitted,

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